

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES of AMERICA,

4 -against-

20 Cr. 495 (VB)
Initial conference

5 GUSTAVO L. VILA,

6 Defendant.
7 -----x

8
9 United States Courthouse
10 White Plains, New York

11 October 1, 2020

12
13 THE HONORABLE VINCENT BRICCETTI,
14 District Court Judge

15 AUDREY STRAUSS

16 Acting United States Attorney for
the Southern District of New York

17 BY: SARAH L. KUSHNER

Assistant United States Attorney

18
19 FEDERAL DEFENDERS OF NEW YORK INC.

20 Attorneys for Gustavo L. Vila

21 BY: SUSANNE BRODY
22
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24
25

1 THE CLERK: United States of America against Gustavo
2 Vila, 20CR495. On the phone, Judge, for the government, is
3 Sarah Kushner, and for the defendant we have Susanne Brody and
4 her client, Mr.Vila, along with your court reporter and several
5 members of the public on the line as well.

6 THE COURT: Good morning, everybody. This is an
7 initial conference in this matter before me. I can see from
8 the ECF docket that the defendant was arraigned on a complaint
9 on September 3rd. On September 18th he waived indictment and
10 pleaded not guilty to a one-count information.

11 I received from Ms. Brody a form entitled consent to
12 proceed by video or teleconference, and I just want to make
13 sure Mr.Vila consents to proceed by teleconferencing today.

14 So Mr.Vila, are you there?

15 Mr. Vila, are you there? Okay.

16 MR. BRODY: You have to unmute your phone now.

17 THE DEFENDANT: Yes, I am, your Honor. Sorry about
18 that.

19 THE COURT: Okay. Mr.Vila, are you there?

20 THE DEFENDANT: Yes, I am, your Honor.

21 THE COURT: All right. I have in front of me a form
22 which was submitted by your attorney with an S-slash signature
23 for the attorney. And what it says is you voluntarily consent
24 to participate in the following proceeding, meaning today's
25 conference, via teleconferencing.

1 Actually, the wrong box is checked on this form. I'm
2 going to recheck it. It says conference for a judicial officer
3 assignment of counsel. That's not what today is about. But
4 there is a box for initial appearance before a judicial
5 officer, namely, me.

6 In any event, have you discussed with your attorney
7 your right to appear in person for today's conference?

8 THE DEFENDANT: Yes, I have, your Honor.

9 THE COURT: And are you willing to waive that right
10 and consent to appear by teleconference for today's conference?

11 THE DEFENDANT: Yes, I do, your Honor.

12 THE COURT: All right, there's a line here for your
13 signature, although the law allows me to obtain verbal consent
14 from you on the record and sign for you. So do I have your
15 consent to sign your name on the document?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: I'm doing that now.

18 Ms. Brody, your name is on here but it's not signed.
19 Do I have your consent to sign your name on the document as
20 well?

21 MR. BRODY: Yes, Judge. There's another mistake I
22 made on the form. I had the wrong crim number. It's 495, I
23 had 445, I don't know why.

24 THE COURT: Ms. Brody, you know me long enough that's
25 the kind of thing I catch. So thank you for telling me, but

1 I've already caught that.

2 In any event, just confirm for me you have discussed
3 this matter with your client and after discussing it with you
4 he expressed to you his willingness to proceed by
5 teleconference.

6 MR. BRODY: That is correct.

7 THE COURT: Okay, I've signed the document, and it
8 will be docketed today.

9 All right, let's see. Ms. Kushner, can you give me a
10 brief overview of what this case is about?

11 MS. KUSHNER: Sure, your Honor. Good morning.

12 Mr.Vila is charged with one count of theft of
13 government funds from stealing over -- nearly a million dollars
14 in funds that were distributed by the 911 Victims Compensation
15 Fund, which is a DOJ program. That money was intended for his
16 client, and other than \$100,000 that he gave to his client, he
17 basically stole and spent the rest on himself.

18 THE COURT: All right. The defendant pleaded --
19 excuse me, the defendant waived indictment and pleaded not
20 guilty to an information; where do we expect this case to go?

21 Are we making discovery? Are we trying to negotiate
22 a disposition? Where are we on this, Ms. Kushner?

23 MR. BRODY: Judge, may I speak to this?

24 THE COURT: Let me hear from Ms. Kushner first.

25 MS. KUSHNER: Yes, your Honor. We are, I think,

1 ready to schedule and enter a plea. And in the interim, I've
2 produced some initial discovery, specifically bank records that
3 Ms. Brody wanted right away.

4 THE COURT: Okay, Ms. Brody, go ahead.

5 MR. BRODY: Yes, your Honor. We had spoken to the
6 Court about entering a plea and were informed this had to be
7 done in person if we were going to enter a plea.

8 THE COURT: Ms. Brody, you have not spoken to the
9 Court. You might have had some email exchange with my deputy.
10 That's not speaking with the Court. If you want to make an
11 application to me, you have to do it either now or in writing
12 to the Court, not by email, that doesn't work. It's got to be
13 on the docket. But just so the record is clear, you have not
14 spoken to the Court. But go ahead, tell me what you want to
15 do.

16 MR. BRODY: What we would like to do is we would like
17 to -- if the Court wants me to file a CARES petition so we can
18 plead by telephone or video, I am happy to do that. Mr. Vila
19 is prepared to enter a plea of guilty to withdraw his plea of
20 not guilty but by telephone.

21 So the question to the Court, does the Court want me
22 filing a CARES petition explaining what the extraordinary
23 circumstances are so that the Court can make a determination,
24 if the Court feels it's appropriate, for us to enter the plea
25 by phone.

1 THE COURT: Yes, of course, because the statute
2 requires -- let me back up. Rule 43(a) requires that guilty
3 pleas have to be done in open Court in the presence of the
4 judge and counsel, et cetera. So there's an exception that has
5 been made by Congress in the CARES Act during a time which a
6 national emergency is declared. We are in the middle of that,
7 of course. There's a number of findings that I would need to
8 make in order to permit that to happen. The relevant one here
9 is that I would have to, quote, find for specific reasons that
10 the plea or sentencing, in this case the plea, cannot be
11 further delayed without serious harm to the interest of
12 justice.

13 MR. BRODY: And I would like to speak to the interest
14 of justice, Judge.

15 As the Court I'm sure is aware, there are a number of
16 attorneys from a law firm Barasch and something on the phone.
17 My understanding is that they represent the victim in this
18 case. I have had a number of discussions with the government
19 and of course with my client.

20 My client may have access to funds within the next
21 couple of weeks. A residence owned by his wife, his ex-wife,
22 there's a divorce decree which gives him a certain amount of
23 the profits from the sale of the home. He believes it may be,
24 may be as much as \$130,000.

25 There's another property that was a business property

1 that's in receivership that he anticipates receiving cash from.
2 In discussions with the government, we believe in this
3 particular case, and I will be filing the CARES petition, I'm
4 just giving the Court a heads up, that the extraordinary
5 circumstances are the need to get the money to the victim as
6 quickly as possible. I've discussed with Mr. Vila, I've
7 discussed with the government, he does not contest he owes the
8 money. He wants to get this money over to the victim as
9 quickly as possible, and we would hope that we could get a plea
10 and a sentence, a sentencing in as quickly as possible to make
11 restitution to the victim. And I believe the government can
12 also speak to this because in speaking with the government they
13 had no objection to my filing a CARES petition and would not be
14 objecting to the extraordinary circumstances.

15 THE COURT: Okay, well, that's fine, you can file a
16 letter, and if it's on consent of the government, you should
17 reflect that in the letter, but the statute says -- it doesn't
18 say anything about extraordinary circumstances or pretty much
19 anything that you just referred to. What it says is that the
20 judge has to find for specific reasons that the plea or
21 sentencing in the case not be further delayed without serious
22 harm to the interest of justice. So you need the address
23 whether there's a basis for me to make that finding or not, and
24 if you make that application or you present that in a letter,
25 especially if it's on consent of the government, then I may

1 grant it.

2 The courthouse is open. I'm here today. I'm doing
3 other proceedings in the courtroom today, and Mr.Vila is not in
4 custody. It's not self-evident that we need to do this by
5 video. It's not clear to me that we do. And if counsel cannot
6 be present, there are roughly 25 other members of your office,
7 I'm sure any one of them are both competent and willing to
8 appear in person like lawyers do every single day in my
9 courtroom. So I don't know.

10 I know some judges have taken a more laissez-faire
11 view of the CARES Act. I'm not one of those. But you can make
12 whatever application you want to make and I will certainly
13 consider it.

14 Why don't we do this, why don't we -- I'm going to
15 put this over for a month, although I'm hoping that this is
16 going to get straightened out before then, but I'm going to put
17 this over for a month and make your application as soon as you
18 want to make it. And if you do, I'll deal with it immediately,
19 and if it means that we are going to schedule a plea, we'll do
20 that immediately as well, but I'm going to schedule another
21 conference date for approximately a month from now.

22 Donna, can we have a date, please.

23 THE CLERK: Yes, Judge. We're actually going to be
24 on trial perhaps with that *Community* case. So I'm thinking
25 would it be okay if I do the week before like towards the end

1 of the week, Thursday, perhaps the 29th?

2 THE COURT: Of what? Of October?

3 THE CLERK: Of October.

4 THE COURT: Yes, October --

5 THE CLERK: Or you want me to go -- or I could go the
6 following week.

7 THE COURT: No, October 29 or 30th.

8 THE CLERK: Yes. 30th is pretty packed. How about
9 3:00 p.m. on Thursday, October 29th?

10 THE COURT: And that would be a telephone conference,
11 if we have it. I'm hoping that we're not going to need to have
12 it at that time. We'll advance that date for purposes of a
13 disposition. If we don't, it will be October 29, 3:00 p.m. by
14 teleconference.

15 Is that acceptable, Ms. Kushner?

16 MS. KUSHNER: Yes, your Honor.

17 THE COURT: Ms. Brody?

18 MR. BRODY: Yes.

19 THE COURT: Okay. Other than an application to
20 exclude time under the Speedy Trial Act, is there anything else
21 that we need to do today?

22 Ms. Kushner.

23 MS. KUSHNER: No, your Honor. I would like to note
24 that the government is more than happy to do a plea in person,
25 but that if your Honor makes the findings, we do think that the

1 need for restitution to be paid as quickly as possible will tip
2 the scale in terms of in the interest of justice.

3 THE COURT: You know that strikes me as sort of an
4 odd thing though, honestly. If he wants to pay it, he can just
5 pay it. If he gets the money, he can pay it. He can pay it
6 over to Ms. Brody, and I'm sure there must be some way which
7 the Federal Defenders can escrow it, or pay it over to the
8 government and be sort of an advance payment against any
9 restitution obligation. I mean you just said that he owes the
10 money. So if he owes the money, pay the money. I don't know
11 why that's such a complicated matter and why it requires
12 basically doing something that the law ordinarily forbids. But
13 you know, you're going to make your application and the
14 government is going to weigh in.

15 And please don't weigh in by saying, Ms. Kushner,
16 that we take no position. That's not acceptable to me, and I
17 tell prosecutors that all the time. Take a position. The
18 position is we consent or we object. It's one or the other.
19 Okay?

20 MS. KUSHNER: Understood.

21 THE COURT: The fact that you say the government has
22 no problem appearing in person, well, of course not, that's
23 what the law requires. Of course you have no problem appearing
24 in person. That happens and it has happened for time
25 immemorial and it's happening today and every day. In this

1 courthouse yesterday every single judge was in the building;
2 every District Judge, every Magistrate Judge, the Bankruptcy
3 Judge, everybody was here doing their job in public as
4 essential workers as we do every single day.

5 All right, so make your application as soon as
6 possible.

7 Ms. Brody, is there anything further you want to
8 raise other than an application for speedy trial exclusion?
9 Other than that.

10 MR. BRODY: No, but you know, the attorneys in my
11 office are not fungible, we do have relationships with clients.
12 We're not US Attorneys who can just step into a case, and
13 unfortunately, I'm not permitted to enter the courtroom, and
14 I'll put it in my application, and the Court will do what the
15 Court will do.

16 THE COURT: I understand that, Ms. Brody, but that's
17 just not a factor under the CARES Act.

18 MR. BRODY: I understand, Judge.

19 THE COURT: That's the issue here. The issue is not
20 your situation of which you know I am sympathetic, I don't need
21 to say that, you know it already.

22 MR. BRODY: I know.

23 THE COURT: That's not the question. The question is
24 are there specific reasons why this cannot be delayed without
25 doing serious harm to the interest of justice? I don't want

1 the rephrase it. It's the statute. The statute is the
2 statute.

3 Anyway, okay, Ms. Kushner, you want to make an
4 application under the Speedy Trial Act?

5 MS. KUSHNER: Yes, your Honor.

6 THE COURT: Go ahead.

7 MS. KUSHNER: Can we exclude time through October 29
8 to allow the parties to continue finalizing a pretrial
9 disposition of this matter?

10 THE COURT: Okay, any objection, Ms. Brody?

11 MR. BRODY: I have no objection, I do have a question
12 though.

13 THE COURT: I didn't ask you for questions. I asked
14 you if you had any objections.

15 MR. BRODY: I said no objection, but I still have a
16 question.

17 THE COURT: All right, the Court excludes time under
18 the Speedy Trial Act from today through and including
19 October 29, 2020. I find that the ends of justice served by
20 granting the requested continuance outweigh the best interest
21 of the public and the defendant in a speedy trial for the
22 reasons stated on the record by Ms. Kushner.

23 Yes, Ms. Brody, what question do you have?

24 MR. BRODY: I don't know if the Court has allowed
25 this up to this point, but would it be possible to have

1 somebody in my office stand in the courtroom and have me on the
2 phone?

3 THE COURT: Yes.

4 MR. BRODY: We will arrange that as quickly as we
5 possibly can, Judge.

6 THE COURT: I didn't deny your application to proceed
7 under the CARES Act, so you can do whatever you want, but the
8 short answer to that is absolutely yes, and in fact, I think it
9 would -- well, the answer is yes. That's the short answer.

10 MR. BRODY: That's what we will do, Judge. I'll get
11 one of the attorneys in my office and I will arrange it with
12 chambers and my office, and instead of getting the CARES --
13 filing a petition, we will get the plea in as quickly as we
14 possibly can.

15 THE COURT: Correct. You're absolutely welcome to
16 participate by phone.

17 Mr.Vila, would that be acceptable to you?

18 In other words, would it be acceptable to you to have
19 Ms.Vila -- excuse me, Ms. Brody on the phone and being able to
20 weigh in during a plea proceeding and participate fully but
21 also to have one of the other members of the Federal Defenders
22 of New York, which is a pretty large office representing
23 hundreds at any one time, maybe thousands of indigent criminal
24 defendants in cases before this court, and they're all
25 competent and they're all experienced, and so would it be

1 acceptable to you to have that arrangement where Ms. Brody
2 would be on the phone and one of her colleagues would be in the
3 courtroom with you and the prosecutor?

4 THE DEFENDANT: Yes, your Honor, that's acceptable.

5 THE COURT: And if we do it that way, I will give you
6 every opportunity to speak privately. In other words, I would
7 just leave the courtroom, everybody would leave the courtroom,
8 you'd have an opportunity to speak privately with your attorney
9 if you needed to do so during that preceding. Okay? In other
10 words, we'll make the appropriate accommodation.

11 So with that added provision, again, I'm asking you,
12 is that acceptable to you?

13 THE DEFENDANT: Yes, it is, your Honor. Thank you.

14 THE COURT: Great. All right, thank you all very
15 much. Please be in touch with my deputy to schedule change of
16 plea proceeding, if that's where we end up.

17 All right, thank you all. Have a good day.

18 MS. KUSHNER: Thank you, your Honor.

19 MR. BRODY: Thank you.

20 (Proceedings concluded)

21 CERTIFICATE: I hereby certify that the foregoing is a true and
22 accurate transcript, to the best of my skill and ability, from
my stenographic notes of this proceeding.

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Angela A. O'Donnell, RPR, Official Court Reporter, USDC, SDNY

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